

1 APPEARANCES: (CONT' D.)

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4 Springfield, Illinois 62701

5 (Appearing on behalf of staff of
6 the Illinois Commerce
7 Commission.)
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PROCEEDINGS

JUDGE WALLACE: Pursuant to the direction of the Illinois Commerce Commission, I now call Docket 05-0741. This is the matter of the Illinois Commerce Commission on its own motion versus Consumers Gas Company. This is a reconciliation of revenues collected under the gas adjustment charge with actual costs prudently incurred.

May I have the appearances for the record, please?

MR. MORRIS: Stanley Morris of Quinn, Johnston, Henderson & Pretorius, 205 South Fifth Street, Suite 900, Springfield, Illinois 62701. Our telephone number is area code (217)753-1133 on behalf of Consumers Gas Company.

MS. BUELL: Appearing on behalf of staff witnesses in the Illinois Commerce Commission, Linda M. Buell, 527 East Capitol Avenue, Springfield, Illinois 62701. My telephone number is area code (217)557-1142.

JUDGE WALLACE: All right. And it's my understanding that everyone wants to cross everyone?

1 MS. BUELL: That's correct, Your Honor.

2 MR. MORRIS: Yes, sir.

3 JUDGE WALLACE: Maybe want is not the right
4 word but...

5 So we have Mr. Lounsberry,
6 Mr. Anderson, and Mr. Kahle?

7 MS. BUELL: That's correct, Your Honor.

8 JUDGE WALLACE: And then Mr. Robinson?

9 MR. MORRIS: Yes.

10 JUDGE WALLACE: Have you worked out an order?

11 MS. BUELL: Well, I think Mr. Robinson should
12 go first.

13 JUDGE WALLACE: All right. Would everybody
14 please stand and raise your right hand?

15 (Whereupon the witnesses were
16 sworn by Judge Wallace.)

17 JUDGE WALLACE: All right. Mr. Morris, you may
18 proceed.

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C. A. ROBINSON

called as a witness herein, on behalf of Consumers Gas Company, having been first duly sworn on his oath, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MORRIS:

Q. Will you state your name, please?

A. C. A. Robinson, Consumers Gas Company, 1410 North Cullen, Evansville, Indiana 47716. I'm president of Consumers Gas.

JUDGE WALLACE: Oh, I'm sorry. Let me interrupt you.

MR. MORRIS: Sure.

JUDGE WALLACE: Did you have any objection to the motion to file surrebuttal instanter?

MS. BUELL: No, Your Honor, staff has no objection.

JUDGE WALLACE: All right. That motion to file surrebuttal testimony instanter is hereby granted.

Q. BY MR. MORRIS: Mr. Robinson, I'm handing you or showing you testimony that's previously been filed on the e-docket and that I have identified as

1 Exhibit 4 and ask you if this is a copy of the direct
2 testimony you previously filed in this docket?

3 A. It is.

4 Q. Pardon me?

5 A. It is the same document.

6 Q. And, Mr. Robinson, if I were to ask you the
7 questions that are included in Exhibit 4 this
8 morning, would your answers to those questions be the
9 same as previously filed?

10 A. Yes, they would.

11 Q. And, Mr. Robinson, I'm now showing you a
12 document that I've had marked for identification as
13 Company Exhibit 5 and ask you if this is -- first of
14 all I just ask if you recognize it to be your
15 rebuttal testimony?

16 A. Yes, I do.

17 Q. And this Exhibit 5 has also been previously
18 filed on the e-docket, has it not?

19 A. It has.

20 Q. And Mr. Robinson, if I were to ask you this
21 morning the questions that are included in Exhibit 5,
22 would your answers to those questions be the same as

1 previously given?

2 A. They would, yes.

3 Q. And lastly, Mr. Robinson, I'm showing you a
4 document that I've had previously marked for
5 identification as Company Exhibit 6 and ask you if
6 you recognize that to be a copy of your surrebuttal
7 testimony?

8 A. It is.

9 Q. And, Mr. Robinson, if I were to ask you the
10 questions this morning that are included in Company
11 Exhibit 6, would your answers to those questions be
12 the same as previously given?

13 A. Yes, they would.

14 MR. MORRIS: Judge Wallace, I move subject to
15 cross-examination and motion to strike for the
16 admission of Company Exhibits 1 through 6; 1 being
17 the copy of the notice. We don't have it here.
18 Sorry, Judge. 1 being the copy of the notice, 2
19 being the publication, Exhibit 3 is the accounting,
20 the actual reconciliation that is attached to the
21 testimony identified as Exhibit 4, and then
22 Exhibit 5, the rebuttal testimony, Exhibit 6, the

1 surrebuttal testimony.

2 MS. BUELL: Just to make clear, Mr. Morris said
3 motion to strike. Is that what you meant?

4 MR. MORRIS: Oh, no, no. Subject to any
5 relevant motion and cross-examination.

6 JUDGE WALLACE: Okay. Has the notice and
7 publication and auditor's report, have they been
8 filed on e-docket?

9 MR. MORRIS: The notice that is posted in the
10 company office and the certificates of publication
11 have not been filed on e-docket.

12 JUDGE WALLACE: Have not been?

13 MR. MORRIS: Have not. And I have it here.

14 JUDGE WALLACE: And Exhibit 3, that has or has
15 not been?

16 MR. MORRIS: It has been.

17 JUDGE WALLACE: Okay. All right. We don't
18 have to do it right now but we will mark Consumers
19 Gas Exhibits 1 and 2 or the court reporter will mark
20 them.
21
22

1 (Whereupon Consumers Gas
2 Exhibi ts 1 and 2 were marked for
3 i denti fi ca ti on as of this date.)

4 MS. BUELL: Just to make clear, Exhibi t 1 is
5 the notice, and Exhibi t 2 --

6 (Whereupon Mr. Morris handed
7 some documents to Ms. Buell.)

8 MS. BUELL: Thank you. I now have copies also.

9 JUDGE WALLACE: All right. Do you have cross
10 of Mr. Robinson?

11 MS. BUELL: Yes, I do.

12 JUDGE WALLACE: Do you have any objections to
13 the exhi bi ts?

14 MS. BUELL: No, Your Honor.

15 JUDGE WALLACE: All right. Consumers Gas
16 Exhibi ts 1, 2, 3, 4, 5 and 6 are admitted into the
17 record.

18 (Whereupon Consumers Gas
19 Exhibi ts 1 through 6 were
20 admitted into evidence at this
21 time.)

22 JUDGE WALLACE: Ms. Buell, you may cross

1 Mr. Robinson.

2 MS. BUELL: Thank you, Your Honor.

3 Good morning, Mr. Robinson.

4 THE WITNESS: Good morning.

5 MS. BUELL: My name is Linda Buell, and I'm
6 representing staff witnesses in this proceeding, and
7 I have a few questions to ask you about your
8 testimony.

9 CROSS-EXAMINATION

10 BY MS. BUELL:

11 Q. The first question I have for you regards
12 your direct testimony on page 1.

13 A. Okay.

14 Q. In question 2, you answered that you are
15 director, shareholder, and president of Consumers Gas
16 Company.

17 Is that still correct?

18 A. That is correct.

19 Q. And, Mr. Robinson, would you agree that as
20 president of Consumers Gas that you have the
21 responsibility of purchasing gas supplies for
22 ratepayers at the best price possible?

1 A. Yes, ma'am.

2 Q. Do you have your rebuttal testimony there

3 as well?

4 A. I do.

5 Q. Now, beginning on page 1 of your rebuttal

6 and throughout your rebuttal in fact, you discuss

7 purchases of gas that Consumers made from a company

8 called Egyptian, is that correct?

9 A. I don't see --

10 Q. Well, in fact, page 2, question 12 for

11 example.

12 A. Okay.

13 Well, I looked on page 1. On No. 7 it

14 does say we purchase gas from Egyptian.

15 Q. Correct.

16 When you discuss Egyptian in your

17 rebuttal testimony, are you referring to a company

18 called Egyptian Gas Storage?

19 A. Yes.

20 Q. And what is your position with Egyptian Gas

21 Storage?

22 A. I'm a shareholder, stockholder, director

1 and president.

2 Q. Okay. Thank you.

3 And would you agree as president of
4 Egyptian that you have the responsibility to maximize
5 profits for the owners of that company?

6 A. Correct, I do.

7 Q. And is it also correct that Egyptian sells
8 gas to Consumers?

9 A. Yes, ma'am.

10 Q. Now, when Egyptian sells gas to Consumers,
11 does Egyptian normally sell that gas at a loss or
12 does Egyptian make a profit?

13 MR. MORRIS: I object. That's actually two
14 questions.

15 Why don't you just ask him one at a
16 time.

17 MS. BUELL: Fair enough.

18 Q. When Egyptian sells gas to Consumers, does
19 Egyptian sell that gas at a loss?

20 A. No.

21 Q. Does Egyptian then sell that gas at a
22 profit?

1 A. Yes.

2 Q. Would it be correct to say then that in
3 2005, which is the subject of the instant proceeding,
4 that when you were president of the utility Consumers
5 Gas which made purchases from an unregulated company,
6 Egyptian, of which you were president, that
7 transactions occurred between these two companies?

8 A. They did.

9 Q. And those transactions were Egyptian sold
10 gas to Consumers?

11 A. Correct.

12 Q. Now, beginning on page 2 of your rebuttal
13 testimony which you referred to before, you discussed
14 specifically Consumers June 8, 2005 purchase of gas
15 from Egyptian.

16 A. Okay.

17 Q. Now, this purchase from Egyptian took place
18 instead of a purchase from Consumers regular
19 supplier, ProLiance, is that correct?

20 A. ProLiance was our regular contract gas
21 supplier for our contract gas for each month, yes.

22 We could buy gas from anyone on the

1 storage contract.

2 Q. Now, on June 8, 2005 when Consumers
3 purchased gas from Egyptian instead of its regular
4 supplier ProLiance, this was the very same day that
5 Egyptian reached an agreement with Atmos to purchase
6 gas?

7 A. That happened to be the same day that we
8 reached agreement. We had not taken the gas from
9 Atmos though at that time, Egyptian had not.

10 Q. And so as president of Egyptian, were you
11 aware that Egyptian had purchased its gas from Atmos
12 at \$6.25 per decatherm?

13 A. I was.

14 Q. And is it also correct that on this very
15 same day as president of Egyptian, you sold the gas
16 at \$7.74 to Consumers of which you're also president?

17 A. That is correct.

18 Q. Now, on page 4, question 19 of your
19 rebuttal testimony, you indicate that Consumers did
20 not have the necessary funds to make a direct
21 purchase of the gas from Atmos, is that correct?

22 A. That is correct.

1 Q. As president of Consumers, did you attempt
2 to borrow or look into borrowing funds that would
3 have allowed Consumers to make the direct purchase
4 from Atmos?

5 A. I did not look because it didn't enter my
6 mind that Consumers had a right to buy that gas
7 because they did not have a contract with Atmos. I
8 did not look into it but we didn't have the funds, so
9 I didn't look into it because I knew we didn't have
10 the funds.

11 Q. Have you read staff witness Kahle's direct
12 testimony?

13 A. I have.

14 Q. Do you have a copy of it there before you?

15 A. Which one is that?

16 Q. Daniel Kahle.

17 A. Daniel Kahle. Okay.

18 Q. If you could look to his Schedule 1.04?

19 A. Okay.

20 Q. I have an extra copy of his testimony if
21 you need it.

22 A. Okay. We've got it. It's here somewhere.

1 (Pause)

2 A. Okay.

3 Q. Now, do you understand that in Schedule
4 1.04, staff witness Kahle demonstrates that the
5 financing costs for such a loan might not have been a
6 burden to Consumers? Is that your understanding of
7 that schedule?

8 A. That schedule, I disagreed with it.

9 MR. MORRIS: Yeah, and I object to the question
10 as to --

11 JUDGE WALLACE: Wait. Before we go any
12 further, which piece of testimony did you direct him
13 to?

14 MS. BUELL: Daniel G. Kahle's direct testimony,
15 ICC Staff Exhibit 1.0. I've asked him to take a look
16 at Schedule 1.04.

17 JUDGE WALLACE: Okay.

18 MR. MORRIS: I first object because that
19 schedule isn't even in evidence at this point.
20 Mr. Robinson is not an accountant as Mr. Kahle is.
21 We disagree with the whole concept.

22 Having said that, we'll wait for the

1 judge's ruling.

2 JUDGE WALLACE: Well, the objection is
3 overruled.

4 THE WITNESS: What was the question again? I'm
5 sorry.

6 MS. BUELL: I believe I asked you if you
7 understood that staff witness Kahle demonstrated in
8 Schedule 1.04 that the financing costs for a loan
9 that Consumers might have taken out to make a direct
10 purchase of the Atmos gas might not have been a
11 burden.

12 MR. MORRIS: And I object to the question
13 because you're making the assumption that he agrees
14 with Mr. Kahle as having demonstrated that, and I
15 don't think that's proper.

16 JUDGE WALLACE: The objection is overruled.

17 THE WITNESS: I understand what he's done, what
18 he's performed, but that doesn't mean I agree with it
19 because I don't think we could afford the money
20 because of our financial position. We had already
21 had a long-term loan of a million five.

22 Banks do not like to lend money on

1 cash inventories. We had a very tough time getting a
2 million five long term, but it wasn't on cash
3 inventory. It was on our physical inventories.

4 Q. BY MS. BUELL: So given all that, then you
5 didn't even try to get a loan?

6 A. No, I did not. I know what I can get and
7 what I can't get. It certainly wouldn't be at prime.
8 He had prime located, and it would not be at prime
9 because we're not a prime borrower.

10 Q. Now, in your surrebuttal testimony on page
11 2, you also say that Atmos could not sell the gas
12 directly to Consumers because there was no contract
13 between the two.

14 A. That's correct.

15 Q. As president of Consumers then, did you
16 ever attempt to negotiate a contract with Atmos for a
17 direct purchase?

18 A. No, I did not.

19 MS. BUELL: Your Honor, at this point I would
20 like to introduce a cross exhibit. May I approach
21 the witness?

22 JUDGE WALLACE: Yes.

1 (Whereupon ICC Staff Cross
2 Exhibit 1 was marked for
3 identification as of this date.)

4 Q. BY MS. BUELL: Mr. Robinson, I show you
5 what has been marked for identification as ICC staff
6 Cross Exhibit 1.

7 Mr. Robinson, do you recognize this
8 document?

9 A. Yes, I do.

10 Q. Can you describe for us what that document
11 is?

12 A. This is original gas storage agreement from
13 Atmos to Egyptian dated in 1993.

14 Q. And is it correct that this is attached to
15 a data request response that was submitted by staff
16 to Consumers Gas?

17 A. Yes.

18 Q. And did you prepare this response or was it
19 prepared under your supervision and direction?

20 A. It was prepared by me but with the help of
21 Connie Warren who's our office manager.

22 Q. Thank you.

1 Now, you've indicated that attached to
2 the data request response is a storage service
3 agreement between Egyptian and Atmos, correct?

4 A. Correct.

5 Q. Now, is there any language in this contract
6 that indicates that Egyptian has the exclusive rights
7 to purchase Atmos's in-place inventory from the
8 Egyptian storage service?

9 A. There's nothing that says that they can't,
10 no.

11 MS. BUELL: Your Honor, I have another cross
12 exhibit to introduce into the record. May I approach
13 the witness?

14 JUDGE WALLACE: Yes.

15 (Whereupon ICC Staff Cross
16 Exhibit 2 was marked for
17 identification as of this date.)

18 Q. BY MS. BUELL: Mr. Robinson, I'm going to
19 show you a document which has been previously marked
20 for identification as ICC Staff Cross Exhibit 2.

21 A. Okay.

22 Q. Do you recognize this document,

1 Mr. Robinson?

2 A. Yes, I do.

3 Q. Could you please describe it for the
4 record?

5 A. They wanted to know what special rights
6 Egyptian had to purchase Atmos's gas in place, so it
7 was the answer to that question.

8 Q. Okay. So this was a staff data request
9 that was sent to Consumers Gas Company?

10 A. Right.

11 Q. In fact, it was ENG 1.91?

12 A. Right.

13 Q. And you indicated that this response was
14 prepared by you?

15 A. Yes, it was.

16 Q. And do you agree that your response
17 indicates that, in addition to there was no wording
18 that gave Egyptian the exclusive right, that there
19 was language that indicated that Egyptian would have
20 to provide its consent to assign the storage contract
21 or sell that in-place inventory to another entity?

22 A. That was in the contract, that each party

1 had to agree to it.

2 Q. Okay. Now, if you would look back to ICC
3 Staff Cross Exhibit 1 which is your response to ENG
4 1.90, if you would turn to page 7 of that agreement
5 which is also titled Exhibit A, would you agree that
6 Egyptian charged Atmos 5 cents for each decatherm
7 injected as well as five cents for each decatherm
8 withdrawn?

9 A. Yes.

10 Q. And would you also agree that the storage
11 facility that Egyptian used to provide storage
12 service to Atmos is the same storage facility
13 Egyptian used to provide storage service to
14 Consumers?

15 A. Yes.

16 Q. I think we've taken that as a given, but...

17 A. Yes.

18 Q. Now, there's also a gas storage agreement
19 between Consumers and Egyptian that was in effect
20 during the 2005 reconciliation year. Mr. Lounsberry
21 has that attached to his testimony as Schedule 3.04.

22 Do you have the gas storage agreement?

1 A. Let me find it here.

2 Q. If you don't, it is attached to

3 Mr. Lounsberry's testimony.

4 A. Okay.

5 (Pause)

6 A. Okay. I'm looking at it now.

7 Q. 3.04 is that contract, and would you agree

8 that this contract indicates that Egyptian charged

9 Consumers ten cents for each decatherm injected and

10 ten cents for each decatherm withdrawn?

11 A. Correct.

12 Q. So then can we conclude from that that

13 Egyptian charged its affiliate Consumers an injection

14 withdrawal rate that was double what Egyptian charged

15 Atmos?

16 A. For the volume of gas that they took, yes,

17 I do.

18 Q. Now, looking at the gas sales agreement

19 again, where does Egyptian purchase the gas that it

20 ultimately sells to Consumers pursuant to the gas

21 storage agreement?

22 MR. MORRIS: I'm sorry. I didn't understand

1 your question.

2 Q. Where does Egyptian purchase the gas that
3 it ultimately sells to Consumers under this contract?

4 MR. MORRIS: Under Exhibit 3.04, the one that's
5 attached to Eric's testimony?

6 MS. BUELL: Yes; Schedule 3.04.

7 MR. MORRIS: Okay.

8 THE WITNESS: I still don't exactly know what
9 you mean. I'm sorry.

10 Does the gas that we bought -- repeat
11 that for me if you don't mind.

12 MS. BUELL: I'm sorry. I directed you to the
13 wrong agreement. I was referring to Schedule 3.03
14 attached to Mr. Lounsberry's testimony, and that's
15 the gas sales agreement between Consumers and
16 Egyptian.

17 THE WITNESS: Okay.

18 MS. BUELL: I apologize.

19 Q. The question was where does Egyptian
20 purchase the gas that it ultimately sells to
21 Consumers under the gas sales agreement?

22 A. Where does it purchase the gas? Where does

1 Egyptian purchase the gas?

2 Q. Yes, sir.

3 A. Different places. It depends on who's
4 selling it. We could go with any buyer. Looking at
5 our inventory, we bought from three or four different
6 places.

7 Q. In 2005?

8 A. Oh, you're saying 2005.

9 Q. Correct.

10 A. 2005, the only gas purchased was from
11 Atmos, but we already had gas in inventory that had
12 been purchased years before.

13 Q. From various suppliers?

14 A. Yeah, I've got the suppliers. We furnished
15 that in one of our data requests. We furnished a
16 copy of our inventory and where it came from.

17 Q. And so when Egyptian sold the gas to
18 Consumers on June 8, 2005, was this gas that was
19 purchased from wells in Consumers territory?

20 A. We don't know where the gas came from. We
21 bought it from companies, and we didn't ask where it
22 came from. It was just gas we priced at a certain

1 price and we bought... Some of this goes back to
2 1998, some of our storage gas.

3 Of course, we're now last in first
4 out. We used to be first in first out.

5 Do you understand what I'm talking
6 about?

7 Q. Yes, I do, sir.

8 A. So some of this gas stays in for years.

9 We never asked where the gas comes
10 from because it's really immaterial. It's what is
11 the price of the gas. All we're interested in is the
12 price of the gas, not where it came from.

13 Q. So then what you're saying is that the
14 purchase by Consumers from Egyptian of Atmos's gas or
15 gas on June 8, 2005 wasn't necessarily produced from
16 wells in Consumers' territory?

17 MR. MORRIS: I object. That's a misstatement
18 of his testimony.

19 A. We don't know where Atmos purchased their
20 gas from. We have no idea, but we did not sell
21 Atmos's gas to Consumers. We already had our own gas
22 in the storage field.

1 Q. So then is it your testimony that on
2 June 8th, Egyptian purchased gas from Atmos and on
3 that very same day, Egyptian sold gas to Consumers
4 but that is not a related transaction?

5 MR. MORRIS: I object to that. That actually
6 calls for a conclusion, a legal conclusion as to
7 whether it's a related transaction.

8 JUDGE WALLACE: I think the witness can answer
9 if those transactions were related.

10 THE WITNESS: They were not actually related.
11 They seem to be related, but the gas that we
12 purchased from Atmos we did not take delivery until
13 the 16th of June.

14 At the time that we sold on the 8th of
15 June, we sold 113,000 plus decatherms of gas to
16 Consumers. We had in inventory 166,000 at that time.

17 So the purchase of Atmos gas had
18 nothing to do with what we were selling. We already
19 had gas in storage. It happened to be the pricing of
20 the gas that created the sale.

21 We look at gas prices every day maybe
22 two and three times a day, and starting June 1st, gas

1 prices started increasing, and June 7th, it was
2 \$7.05. It went up in June as high as \$7.76, so we
3 realized that gas was going up rapidly, very
4 volatile, so this would be a good time I thought for
5 Consumers to buy gas.

6 So even though it happened on the same
7 date, it could have been the next day or the two days
8 before really, but the price would have been
9 different, but we bought on a daily price, and the
10 price was 7.05, and we sold it at \$7.

11 So pricing is what really determined
12 that date.

13 Q. My understanding of your testimony at the
14 beginning of my cross-examination was that Egyptian
15 bought gas at \$6.25 cents that day from Atmos and
16 turned around and sold gas to Consumers at \$7.74?

17 A. It wasn't the same gas. We still have that
18 gas in storage.

19 Q. Mr. Robinson, can you tell us if during the
20 2005 reconciliation year Egyptian sold any gas to
21 Consumers that was produced from wells located in
22 Consumers' territory?

1 A. In 2005?

2 Q. Yes, sir.

3 A. Unless some of that gas that belonged to --
4 you know, I don't know the answer to that because we
5 purchased gas from different companies, and where
6 they get the gas we do not know.

7 I would doubt that it came locally
8 though but it could have. I'm not in a position to
9 say. We never asked our supplier where do you get
10 your gas. We asked him what is the price of your
11 gas.

12 We don't know where anybody's gas
13 comes from.

14 Q. Mr. Robinson, can you say during the
15 reconciliation year if Egyptian purchased any gas
16 directly from local suppliers?

17 A. We did not purchase any local gas from
18 local suppliers other than Atmos, right, that is
19 correct. That was the only purchase for the year.

20 Q. I just have one final question,
21 Mr. Robinson.

22 Now, you testified that you're the

1 president of both the regulated utility purchaser of
2 gas, Consumers, and the unregulated supplier of gas,
3 Egyptian.

4 You said that as president of
5 Consumers, you have responsibility to purchase gas
6 supplies for ratepayers at the best possible price
7 but as president of Egyptian that you have the
8 responsibility to maximize profits for the owners of
9 that company.

10 Now, given the potentially disparate
11 viewpoints that you have as president of Consumers,
12 the regulated company, and president of Egyptian, the
13 unregulated company, do you understand why staff or
14 maybe even a reasonable person would perceive that
15 there is a conflict of interest when you decided that
16 Consumers should purchase in place inventory from
17 Egyptian on June 8, 2005?

18 A. You know, I don't know the answer to that
19 because it never entered my mind that -- well, we
20 have a contract how we sell gas to Consumers.
21 Egyptian has a gas contract and admit that they have
22 to charge a nickel less than any other customer, any

1 other marketer, and we charge less, so that's covered
2 by gas contracts, so that prevents us from taking
3 advantage of Consumers in any manner, and we charged
4 a nickel less than the going price of gas on the date
5 of June 8th.

6 Q. But my question was whether you understood
7 how a reasonable person could see a conflict?

8 A. I guess you could. We've never done --

9 MR. MORRIS: Let me object. I didn't object
10 the first time to the use of reasonable person but
11 that's a real vague term, and I object to the use of
12 that.

13 I don't have an objection to how the
14 staff might find it to be a conflict.

15 THE WITNESS: I don't find it to be a conflict
16 but I guess somebody else could, but with a gas
17 contract in place --

18 JUDGE WALLACE: Mr. Robinson...

19 MR. MORRIS: Wait.

20 THE WITNESS: Sorry.

21 JUDGE WALLACE: I'm going to overrule the
22 objection. I don't know that it would matter if we'd

1 back up and ask if what a reasonable staff person or
2 if a reasonable customer might, so the objection is
3 overruled, and I think he answered the question.

4 MS. BUELL: Yes, he did, Your Honor.

5 JUDGE WALLACE: Okay.

6 MS. BUELL: That's my final question, Your
7 Honor.

8 Staff moves for admission into the
9 evidentiary record ICC Staff Cross Exhibit 1 and ICC
10 Staff Cross Exhibit 2.

11 MR. MORRIS: No objection.

12 JUDGE WALLACE: All right. Staff Cross
13 Exhibits 1 and 2 are admitted.

14 (Whereupon ICC Staff Cross
15 Exhibits 1 and 2 were admitted
16 into evidence at this time.)

17 JUDGE WALLACE: Do you have any redirect,
18 Mr. Morris?

19 MR. MORRIS: I do.

20 REDIRECT EXAMINATION

21 BY MR. MORRIS:

22 Q. Mr. Robinson, Ms. Buell asked you a variety

1 of very broad questions. Let's first discuss the
2 topic of financing that Ms. Buell asked you about.

3 Do you remember her asking about you
4 financing?

5 A. I do.

6 Q. Have you, Mr. Robinson, had occasions in
7 your position as president of Consumers to borrow any
8 money from any commercial lender?

9 A. We borrowed -- yes, I have. We borrowed
10 from Old National Bank long-term and short-term.

11 Q. Do you have any familiarity as president of
12 Consumers or otherwise in the borrowing of money from
13 commercial institutions?

14 A. It is very difficult to borrow on gas
15 inventory because they can't count it. They can't go
16 out and count it. They like to see something that
17 they can see, and you can't see gas in the ground.
18 It's very difficult.

19 Q. I think that you testified, my memory is
20 that you testified in response to Ms. Buell that the
21 physical assets of Consumers were pledged to another
22 loan in early 2005.

1 Was that your answer?

2 A. All of Consumers assets were pledged for
3 the long-term debt of a million five, and if we had
4 gone in for an additional loan, there would be no
5 assets to pledge except the gas inventory that you
6 were purchasing. That would not have been allowed.

7 Q. If you remember, Mr. Robinson,
8 approximately how much money did Consumers have
9 available to it around June 1st of 2005 either on
10 checking account or any other account it might have
11 maintained?

12 A. Gosh, I really don't know that exact
13 amount.

14 Q. Well, did it have any sum approaching
15 \$900,000?

16 A. No. I'd say less than a hundred thousand.
17 It definitely didn't have \$700,000, and if we did, it
18 would be used for operations.

19 Q. Were you familiar with the company's
20 financial status other than its money in the bank
21 around June 1st, June 8th of 2005?

22 A. I was.

1 Q. And what was your general impression of it
2 at that time?

3 A. We were, due to the warmer weather we've
4 experienced during the years, our volume of gas was
5 so small that we sold that year that we did not make
6 a very big profit.

7 Q. Do you have any experience, any personal
8 experience in the banking industry, Mr. Robinson?

9 A. I was a director of Old National Bank and
10 on the loan committee for 20 years.

11 Q. So you have knowledge of the requirements
12 that a lender sets to loan money to an outside
13 company?

14 A. That's correct.

15 Q. Okay. In your opinion, would -- I think
16 you've already stated this but in your opinion, would
17 Old National Bank have loaned \$900,000 to Consumers
18 on June 1, 2005?

19 A. The answer to that is it definitely would
20 not, and when Egyptian who had an account with Old
21 National Bank borrowed their money to buy this gas,
22 they had to change banks because Old National

1 wouldn't loan to it them, and they set there with a
2 million dollars worth of stock that we could have
3 pledged against it, and they turned it down, and I
4 had to go to a second bank for Egyptian. So if they
5 turned Egyptian down with money in the bank, what
6 would they have done with Consumers with no money in
7 the bank.

8 Q. Did you attempt to borrow approximately
9 \$900,000 on behalf of Consumers to make the purchase
10 of the gas from Atmos that we've been discussing?

11 A. No, I did not.

12 Q. And why not?

13 A. It would have wasted my time.

14 Q. Okay. Let's talk about the actual
15 purchase. Ms. Buell got into that at some point.

16 Is it true that Atmos stored gas in
17 the Egyptian storage field?

18 A. Yes, it did.

19 Q. And at some point in your capacity as
20 president of Egyptian, you were notified by Atmos
21 that it wanted to bring its relationship with
22 Egyptian to an end, is that correct?

1 A. That is true.

2 Q. What transpired from that point?

3 A. At that point, they realized that they were
4 going to try to take that gas out during the winter
5 months of 2004-05. It was so warm they couldn't get
6 the gas out, so it came about in March of 2005 after
7 the withdrawal season, they still had gas in the
8 field, and they wanted to negotiate a price for that
9 gas with Egyptian who they had a contract with for
10 them to buy it and to cancel their contract.

11 If the \$6.25 was -- it started out
12 about 6.75, and we negotiated back down to 6.25, plus
13 we terminated the contract which would have lasted
14 another seven months. In other words, they -- well,
15 they can't withdraw gas from May through November
16 because that is our injection months, so they can't
17 withdraw during injection months, so we allowed them,
18 we gave them, we didn't charge them for the rest of
19 the year, and that was 15,000 a month.

20 So in addition to the 6.25 that we
21 paid for the gas, Egyptian gave up 15,000 a month for
22 seven months plus a two percent shrinkage factor

1 which we gave back to Atmos to close the deal, so we
2 really gave more than 6.25 for the gas.

3 Q. Do you recall, Mr. Robinson, how much gas
4 Atmos had in the storage field in the spring of 2005?

5 A. I think it was around 155,000 plus in
6 decatherms.

7 Q. Okay. And did you discuss then with Atmos
8 the purchase of the entire 155,000?

9 A. Yeah. They wanted to sell it all. If they
10 didn't, they'd have had to pay storage.

11 Q. Okay. Was there any discussion about
12 selling less than 155,000 decatherms?

13 A. No.

14 Q. Did you try to pursue that discussion?

15 A. No. They wanted out of the storage field
16 completely and so it was never discussed. They
17 wanted to sell 155,000.

18 Q. Okay. And was the 6.25 that you have
19 mentioned, was that a negotiated price between
20 Egyptian and Atmos?

21 A. Yes, it was.

22 Q. Okay. When was the agreement actually

1 reached with Atmos to sell the gas to Egyptian?

2 A. I think the agreement was reached on
3 June 8th.

4 Q. June 8, 2005?

5 A. Right, and the gas transaction was not
6 completed until June 16th. We didn't take possession
7 of the gas until June 16th.

8 Q. Okay. And to continue and just to
9 elaborate here a little bit, Ms. Buell asked you
10 about then Consumers purchased gas, Egyptian sold gas
11 to Consumers on that same day, June 8, 2005, right?

12 A. Right.

13 Q. Do you have any memory of how that came
14 about, Mr. Robinson?

15 A. It came about because of gas pricing. In
16 hindsight, it probably would have been better to have
17 purchased it in May or June but we didn't because the
18 gas prices were falling drastically in June.

19 Our gas marketer advised that they
20 anticipated gas to continue to fall, but starting
21 June 1st, gas started back up, and on June 7th, it
22 reached \$7.05.

1 Later on that month, it went up to
2 \$7.76. So when it got to \$7 and was rising at the
3 rate of 10 or 15 cents a day, we thought we better
4 make a move, and since Egyptian had gas in storage at
5 that time, not the gas they were buying from Atmos
6 but their own gas, we thought this was a perfect time
7 for Consumers to buy at \$7.

8 Q. And do you recall how much in volume the
9 purchase by Consumers from Egyptian was on June 8,
10 2005?

11 A. It was actually too much. We sold June and
12 July for \$7 which was a nickel less than the going
13 price.

14 Q. And do you recall what the volume of that
15 sale was?

16 A. I'm sorry.

17 (Whereupon the woman sitting
18 next to the witness was writing
19 notes to the witness.)

20 A. It was two months of gas.

21 JUDGE WALLACE: No.

22 MR. MORRIS: We won't do that.

1 THE WITNESS: Okay. We sold a thousand a day
2 which I guess for June is 30,000 and July was 31,000.

3 Q. BY MR. MORRIS: Okay. So the total sale
4 from Consumers to Egyptian for the two months was
5 61,000 decatherms?

6 A. That's correct.

7 Q. Okay. And do you recall how much gas that
8 Egyptian had immediately before that sale of 61,000
9 was made?

10 A. On June 1st, Egyptian had 166,000 plus
11 decatherms of gas in storage prior to buying any from
12 Atmos.

13 Q. So it had more than enough to make the sale
14 of \$61,000 to Consumers?

15 A. That is correct.

16 Q. Apart from any deal with Atmos?

17 A. Atmos gas was purchased for inventory.

18 Q. Okay. You sold the gas -- excuse me, not
19 you. Egyptian sold the gas to Consumers at a price
20 of \$7.05 per decatherm, correct?

21 A. \$7.

22 Q. \$7?

1 A. We gave a nickel less than the going price.
2 Q. Okay. The going price was 7.05.
3 What's the source of the 7.05 number
4 that you used?
5 A. That's the daily gas price on that date.
6 Q. Daily gas price -- NYMEX or some other...
7 A. I don't know exactly who comes up with that
8 daily gas price, but it is a fixed gas price, Gas
9 Daily, there's some publication that comes out with
10 it.
11 Q. Okay. That was 7.05?
12 A. 7.05.
13 Q. You checked that and you obtained that
14 number?
15 A. Yes.
16 Q. Okay. So the price of gas from Egyptian, I
17 mean, yes, the sale of gas from Egyptian to Consumers
18 was at \$7?
19 A. Right, less than the going price at that
20 day.
21 Q. How much less?
22 A. A nickel less.

1 Q. And why?

2 A. Because that's the contract Consumers had
3 with Egyptian. Any gas ever sold by Egyptian to
4 Consumers would be at a nickel less than what they
5 could buy anywhere else.

6 Q. Okay. In the past -- excuse me.
7 Historically, Consumers had purchased gas, storage
8 gas in May, is that correct?

9 A. We try to buy gas in June, July, August and
10 September mainly because we don't want to get into
11 the hurricane season which kicks gas prices higher,
12 so we try to get all our gas stored by September,
13 through September.

14 Q. Okay. Consumers had in the past --
15 Egyptian had in the past -- excuse me. Consumers had
16 in the past -- excuse me. Strike all that.

17 Consumers had made a nomination in the
18 past in May historically, had it not, for the
19 purchase of gas?

20 A. Are you talking about storage gas or
21 contract gas?

22 Q. Well, let's talk about supply gas.

1 A. Supply gas. We have to nominate each month
2 for supply gas.

3 Q. Okay. And did you in May of 2005 make that
4 nomination?

5 A. We purchased gas at the NYMEX price from
6 ProLiance on the third business day before the end of
7 the month, yes.

8 JUDGE WALLACE: Mr. Robinson, it would be
9 helpful when you say we that you designate who that
10 is.

11 THE WITNESS: Consumers. I'm sorry.

12 JUDGE WALLACE: Okay. Thank you.

13 Q. BY MR. MORRIS: And the other part, the
14 storage gas?

15 A. We did not buy storage gas in May for June
16 delivery. We did not.

17 Q. Why not?

18 A. Because the gas price was falling, and we
19 thought we could get a better price in the next
20 month.

21 Q. Okay.

22 A. In hindsight, it would have been a good

1 time to do it but you don't know what gas is -- gas
2 is very volatile.

3 Q. I think you testified that the gas prices
4 then after May started going up?

5 A. Went up to \$7.76 in the latter part of
6 June.

7 If we'd have waited till the middle of
8 June, we'd have paid 7.70. Then they fell back again
9 by the end of June.

10 MR. MORRIS: Okay. That's all I have, Judge.

11 MS. BUELL: I just have a couple of recross
12 questions, Your Honor.

13 JUDGE WALLACE: Go ahead.

14 RECROSS-EXAMINATION

15 BY MS. BUELL:

16 Q. Mr. Robinson, Mr. Morris asked you
17 questions regarding possible loans by Consumers for
18 the purchase of the Atmos gas.

19 His questions I believe, and if I'm
20 wrong, please correct me, went to a long-term loan.
21 Is that your understanding, that Consumers did not
22 seek a long-term loan for these funds or were you

1 answering in terms of a short-term loan as well?

2 A. It would have had to have been a short-term
3 loan. We'd have had to come to the Commission for
4 extension of our long-term loan.

5 Q. Are you aware that loans under 12 months
6 don't need Commission approval?

7 A. That's right. That would be short-term.
8 Yes, I am.

9 Q. Okay. And then you also mentioned that
10 Egyptian purchased the gas from Atmos on June 8th but
11 that Consumers didn't take possession of the gas
12 until June 16th.

13 Is that because the check for the gas
14 wasn't issued until June 16th?

15 A. Well, we agreed --

16 MR. MORRIS: No. If I said that, I misstated
17 because Egyptian is who we're talking about taking
18 possession of the gas, not Consumers on June 16th.

19 Q. BY MS. BUELL: Is it correct then that on
20 June 8th, Egyptian purchased the gas from Atmos, and
21 that was the same day, June 8th, that Egyptian
22 reached an agreement --

1 A. We agreed to...

2 MR. MORRIS: Let her finish.

3 Q. -- reached and agreement with Consumers?

4 A. Right, that is correct.

5 Q. Okay. Thank you for clearing that up.

6 And then the other thing I wanted to
7 ask you about, you spoke at length about prices going
8 up and down in May, and it's my understanding from
9 what you said was that prices were going down in May,
10 and so Consumers wanted to wait till the price went
11 down even lower to purchase gas, but then Consumers
12 finally purchased gas at a point in June when prices
13 were going up?

14 A. That is correct.

15 Q. What I don't understand, if you could
16 explain to me then, if prices were going up in June,
17 why did Egyptian sell that gas to Consumers in June?

18 A. I thought it was a good buy for Consumers.
19 I thought Consumers was getting a benefit of
20 something that Egyptian had, and the price was
21 very -- I don't think we could have gone out on the
22 market and bought it at \$7. You couldn't have bought

1 it because that's a daily price, and I locked it in
2 for a month. I locked it in for two months. I
3 locked the \$7 price in for two months, where if the
4 gas had gone up higher...

5 Q. I don't think you quite answered my
6 question.

7 My question was why, if prices were
8 going up in June, did Egyptian sell the gas on
9 June 8th?

10 A. Because we had gas available in the field.
11 We had to buy it from somewhere. We should have
12 bought it from anybody. We should have made a
13 purchase from somebody. Because we thought the price
14 was going to go higher, then we needed to make a
15 purchase. Consumers needed to make a purchase.

16 Q. But you still didn't answer my question
17 though.

18 What I don't understand is if the
19 prices were going up and the expectation was that
20 prices would continue to go up, why didn't Egyptian
21 hold onto the gas to get a higher price?

22 A. Because we could have bought it on the open

1 market, I guess you could if you could find some
2 market today that would sell it to you. That was the
3 price on that day, and it saved Consumers money by
4 buying it then. I was looking after Consumers
5 interest when I bought it for \$7.

6 Q. But I'm asking you to wear your Egyptian
7 hat for the moment.

8 A. Well, Egyptian, you've got to remember,
9 Egyptian didn't have six and a quarter in all this.
10 The gas we sold to Consumers, Egyptian sold to
11 Consumers, had nothing to do with the six and a
12 quarter that we bought from Atmos because this was
13 gas we already had in the field. We made a profit on
14 that at \$7. We didn't have to have a bigger price.
15 We thought that was a reasonable price. I thought
16 that was a good deal for both companies. I thought
17 both companies benefited.

18 Q. So then it's your testimony that you
19 thought it was a good deal for Egyptian despite the
20 fact that you had the expectation that prices would
21 continue to rise?

22 A. Yeah.

1 MS. BUELL: Okay. I have nothing further.

2 EXAMINATION

3 BY JUDGE WALLACE:

4 Q. Mr. Robinson, the gas that Egyptian
5 purchased from Atmos was already in storage?

6 A. Yes.

7 Q. At a field owned by Egyptian or operated by
8 Egyptian?

9 A. Owned by Egyptian and operated by Egyptian.

10 Q. And with the purchase of that gas by
11 Egyptian from Atmos, that terminated Egyptian's
12 contractual relationship with Atmos at that point?

13 A. We allowed it to. We cancelled the
14 contract with them. We bought the gas and cancelled
15 the contract.

16 Q. Did Egyptian cancel or did Atmos cancel it?

17 A. We cancelled it on their behalf at their
18 request. That was part of the deal for us to buy the
19 gas.

20 Q. Now, Consumers in your testimony you said
21 can only purchase gas from ProLiance and Egyptian?

22 A. During 2005, that's correct.

1 Q. Now, in 2005, did Egyptian buy gas from
2 others than Atmos?

3 A. No. After we bought that 155,000, there
4 was no need to buy any. That was for inventory.
5 That was purchased for inventory. We didn't need any
6 more than, and that was a pretty good purchase for us
7 too.

8 Q. All right. Did Egyptian acquire other
9 contractual rights with any other supplier of gas
10 after the termination with Atmos?

11 A. No.

12 Q. Is Egyptian still in business today?

13 A. Yes, sir.

14 Q. Now, just out of curiosity, you mentioned
15 that you're president of Robinson Engineering, is
16 that correct?

17 A. That's correct.

18 Q. And that was operating in 2005?

19 A. Yes, it was.

20 Q. And it operates natural gas wells in the
21 Midwest?

22 A. It operates gas wells in Illinois, Indiana,

1 and Kentucky and operates five storage fields in
2 Indiana.

3 Q. How does Robinson Engineering sell this
4 natural gas?

5 A. We sell, we don't have -- Robinson
6 Engineering does not own any storage fields. I'm
7 sorry. We sell gas off the wellhead to somebody, to
8 a major pipeline company or to a gas marketer.

9 Q. Okay. Does Robinson Engineering sell
10 natural gas to Egyptian?

11 A. No.

12 Q. And it was your testimony that in 2005,
13 Consumers could not have purchased natural gas from
14 Robinson Engineering?

15 A. Right. We don't have gas wells in
16 Illinois.

17 Q. It says operates gas wells in Illinois,
18 Indiana, and Kentucky.

19 A. Well, we operate oil wells, oil and gas
20 wells. That's a misstatement. We do not have any
21 gas wells in Illinois.

22 Q. The gas wells are in Indiana?

1 A. Indiana and Kentucky. At one time we did
2 years ago. At one time, we had gas that depleted
3 itself in Illinois, so in the last ten years we
4 hadn't had any.

5 Q. I was just trying to understand the
6 procedures here because if Robinson -- well, is one
7 of the reasons Robinson Engineering does not sell gas
8 directly to Consumers is because there's no physical
9 way to get it there?

10 A. From Indiana, no, there's not. You could
11 pay a big transportation fee and go up and switch
12 pipelines. You can eventually get it there but it's
13 not practical.

14 JUDGE WALLACE: Okay. That's where I was going
15 or getting to I think.

16 Okay. Thank you, Mr. Robinson.

17 MR. MORRIS: I just --

18 JUDGE WALLACE: No.

19 MR. MORRIS: We're done?

20 JUDGE WALLACE: Yeah, we're done.

21 MR. MORRIS: Okay.

22 (Witness excused.)

1 JUDGE WALLACE: Ms. Buell?

2 MS. BUELL: Yes, Your Honor. Staff calls
3 Daniel G. Kahle to the stand.

4 DANIEL G. KAHLE

5 called as a witness herein, on behalf of staff of the
6 Illinois Commerce Commission, having been first duly
7 sworn on his oath, was examined and testified as
8 follows:

9 DIRECT EXAMINATION

10 BY MS. BUELL:

11 Q. Good morning, Mr. Kahle. Could you please
12 state your full name and spell your last name for the
13 record?

14 A. Daniel G. Kahle. Kahle is K-a-h-l-e.

15 Q. Mr. Kahle, by whom are you employed?

16 A. The Illinois Commerce Commission.

17 Q. And what is your position at the Illinois
18 Commerce Commission?

19 A. I am an accountant in the Financial
20 Analysis Division.

21 Q. Have you prepared written testimony for
22 this proceeding?

1 A. Yes.

2 Q. Do you have a document before you which has
3 been marked for identification as ICC Staff
4 Exhibit 1.0. This testimony consists of a cover
5 page, table of contents, 13 pages of narrative
6 testimony, Schedules 1.01 through 1.05, Attachments A
7 through L, and it's titled "Direct Testimony of
8 Daniel G. Kahle."

9 A. Yes, I do.

10 Q. And is this a true and correct copy of the
11 direct testimony that you've prepared for purposes of
12 this proceeding?

13 A. Yes, it is.

14 Q. Do you also have before you a document
15 which has been previously marked for identification
16 as ICC Staff Exhibit 4.0. This testimony consists of
17 a cover page, table of contents, 11 pages of
18 narrative testimony, Schedules 4.01 through 4.05, and
19 it's titled "Rebuttal Testimony of Daniel G. Kahle."

20 A. Yes, I do.

21 Q. And is this a true and correct copy of the
22 rebuttal testimony that you prepared for purposes of

1 this proceeding?

2 A. Yes, it is.

3 Q. Do you have any corrections to make to your
4 prepared direct or rebuttal testimony?

5 A. No.

6 Q. Is all the information contained in ICC
7 Staff Exhibits 1.0 and 4.0 true and correct to the
8 best of your knowledge?

9 A. Yes.

10 Q. And if I were to ask you the very same
11 questions today, would your responses be the same?

12 A. Yes.

13 MS. BUELL: Your Honor, at this time, I would
14 ask for admission into evidence of Mr. Kahle's
15 prepared direct testimony marked as ICC Staff
16 Exhibit 1.0 including the attached schedules and
17 attachments and Mr. Kahle's prepared rebuttal
18 testimony marked as ICC Staff Exhibit 4.0 including
19 the attached schedules, and I note for the record
20 that these are the very same documents that were
21 originally filed on the Commission's e-docket system.

22 JUDGE WALLACE: Any objection?

1 MR. MORRIS: No objection.

2 JUDGE WALLACE: ICC Staff Exhibits 1.0 and 4.0
3 are admitted.

4 (Whereupon ICC Staff Exhibits
5 1.0 and 4.0 were admitted into
6 evidence at this time.)

7 MS. BUELL: Your Honor, I tender Mr. Kahle for
8 cross-examination.

9 JUDGE WALLACE: Mr. Morris?

10 MR. MORRIS: Yes. Thank you, Judge. Good
11 morning, Mr. Kahle.

12 THE WITNESS: Good morning.

13 CROSS-EXAMINATION

14 BY MR. MORRIS:

15 Q. Is your Schedule 4.01 which is a part of
16 your Exhibit 4.0, is that a replacement of I think
17 it's Schedule 1.02 that's part of your original
18 testimony?

19 A. You asked me if 4.01 is replacement for
20 1.02?

21 Q. Yes. You had similar schedules with each
22 of your original, your direct testimony, and your

1 rebuttal , and I'm just trying to find out if --

2 A. 4.01 replaces 1.01.

3 Q. I'm sorry. That's correct, 4.01. So we

4 could just suspense with 1.01, right?

5 A. Yes.

6 Q. Okay. Are there any other schedules

7 attached to your Exhibit 1 that are replaced by

8 attachments to Exhibit 4?

9 A. Yes. 4.02 replaces 1.02.

10 Q. Okay. Any others?

11 A. 4.03 replaces 1.03, and 4.04 replaces 1.04,

12 and 4.05 replaces 1.05.

13 Q. So we can just disregard 1.01 through 1.05?

14 A. Yes.

15 Q. Okay. Thank you. The adjustments that are

16 shown in 4.01 are based upon the testimony, the

17 conclusions of staff witnesses Lounsberry and

18 Anderson, are they not?

19 A. That's true of columns --

20 Q. Columns C and D?

21 A. -- D and E.

22 Q. D and E. Okay.

1 And those would be the adjustments for
2 pricing and the adjustments for injections?

3 A. Yes.

4 Q. Okay. And the others, the other
5 adjustments as I understand, Mr. Kahle, are primarily
6 there was some math errors. There was a failure to
7 bring a number forward from a prior year; correct?

8 A. Yes, and I think interest was omitted from
9 some numbers. That's Column C.

10 Q. I'm sorry?

11 A. That's in Column C.

12 Q. But the bulk of the adjustments come from
13 the conclusions of Mr. Anderson and Mr. Lounsberry?

14 A. Yes, that's correct.

15 Q. And so if those conclusions would be
16 altered in any way, then your adjustments would in
17 all probability also need to be altered, is that
18 correct?

19 A. This schedule is, my testimony states, the
20 quantification of their adjustments.

21 Q. Okay. So would that --

22 A. Well, whatever numbers they have would flow

1 through the schedule.

2 Q. Okay. If their quantification should
3 change, then your numbers in Schedule 1.01 would also
4 change?

5 A. Yes. 4.01, yes.

6 Q. Pardon me?

7 A. 4.01, yes.

8 Q. 4.01. Sorry.

9 You have testified and prepared a cash
10 flow analysis that is directed to Consumers' ability
11 or inability to borrow funds in 2005, is that
12 correct?

13 A. Yes.

14 Q. Did you make, Mr. Kahle, did you make any
15 assumptions about the company in preparing the cash
16 flow analysis?

17 A. No. The analysis was to show that the
18 purchase would be possible without a significant cash
19 burden.

20 Q. Were you aware at the time you -- excuse
21 me. Strike that.

22 Were you aware of the monies available

1 to Consumers Gas Company on June 8, 2005?

2 A. Yes.

3 Q. And what was the money available to them,
4 if you know?

5 A. I don't recall the amount, but I know it
6 was not sufficient to make the purchase. Funds would
7 have had to have been borrowed.

8 Q. Okay. And what was the source of that
9 information?

10 A. Data request response from Consumers Gas.

11 Q. All right. Were you familiar, on June 8,
12 2005, were you familiar with the balance statement,
13 balance sheet or the financial statement of Consumers
14 Gas at that time?

15 A. I don't recall if I had a balance sheet for
16 that particular day but I do have financial
17 information from the company.

18 Q. For that day or approximately that day?

19 A. I'd say approximately that day. I don't
20 recall a statement as to a specific day.

21 Q. All right. Did you -- well, the company
22 filed a Form 21, didn't it, to your knowledge for the

1 year 2005?

2 A. Yes.

3 Q. Excuse me. Did they also file one for
4 2004?

5 A. Yes, they would have.

6 Q. Did you look at the Form 21 for ending
7 December 31, 2004?

8 A. I know I looked --

9 Q. In your preparation of this cash flow?

10 A. I know I looked at it at some point, yes.

11 Q. Okay. Did you use any of the information
12 from the Form 21 for 2004 in your preparation of the
13 cash flow analysis?

14 A. No.

15 Q. Did you make an assumption that Consumers
16 had to borrow the money to make the purchase of some
17 \$900,000 of gas from Atmos in 2005?

18 A. Well, as I recall, I believe Mr. Robinson
19 had testimony saying that or perhaps a data request
20 response saying they did not have sufficient funds.

21 Q. Okay. But my question was, did you make an
22 assumption that Consumers -- and you were satisfied

1 that Consumers at that point did not have sufficient
2 funds to make that purchase to pay it in cash?

3 A. Yes.

4 Q. Did you make an assumption that they could
5 borrow the money?

6 A. No. The schedule was presented to show
7 that borrowing in this way would not have been a
8 financial burden.

9 Again, I prepared this in support of
10 Mr. Anderson's testimony.

11 Q. Did you make assumptions of certain cash
12 flow in preparing your cash flow analysis?

13 A. I compared the initial purchase price to
14 the actual amounts paid for those four months.

15 Q. Okay. But did you assume that the company
16 over that period of time -- well, you got the
17 information of the actual amounts paid, correct?

18 A. Yes.

19 Q. And you concluded that the company could
20 have afforded to pay for it in a lump sum, is that
21 correct?

22 A. In a lump sum only if they borrowed funds.

1 Q. Okay. But did you conclude that it had the
2 ability to borrow funds?

3 A. No, I did not.

4 Q. Okay. The ability to borrow funds is
5 neutral in your analysis, correct?

6 A. Yes.

7 Q. So you made the analysis based upon the
8 amount that the company actually paid, correct?

9 A. Yes.

10 Q. And the purpose of your cash flow analysis
11 again is what, Mr. Kahle?

12 A. To show that a lump sum purchase wouldn't
13 necessarily be a financial burden.

14 Q. Okay. And the purpose of showing that a
15 lump sum purchase wouldn't necessarily be a financial
16 burden was what, Mr. Kahle?

17 A. To eliminate the argument that a financial
18 burden would be reason for not making a lump sum
19 purchase.

20 Q. Okay. Does the finding in your cash flow
21 analysis, does it impact the reconciliation, the PGA
22 reconciliation for 2005 for Consumers?

1 A. No.

2 Q. Okay. It's neutral as to any adjustments?

3 A. Correct.

4 Q. Your testimony I believe, to go away from

5 that document, Mr. Kahle, your testimony is that, I

6 believe your testimony is that you didn't personally

7 do any investigation or analysis of items such as the

8 amount in storage at Egyptian Gas Company in May or

9 June of 2005, is that correct?

10 A. Are you talking in terms of this cash flow

11 schedule?

12 Q. No, I'm through with the cash flow

13 statement.

14 A. Okay. The answer is no, I did not.

15 Q. Okay. Did you make any personal study or

16 analysis of gas prices on or about June 5, 2005?

17 A. No.

18 Q. Okay. Your testimony, your schedules then

19 as you say are limited to the quantification based

20 upon the testimony of Mr. Lounsberry and

21 Mr. Anderson, correct?

22 A. Yes, correct.

1 Q. Pardon me?

2 A. Correct.

3 Q. Okay. One of the items that I want to ask
4 you about, Mr. Kahle, is that it's apparent that you
5 and maybe other members of the staff were
6 dissatisfied with some responses to data requests
7 received from Consumers through this proceeding,
8 correct?

9 A. Well, I'll speak for myself. Correct.

10 Q. Okay. Let's just talk about you. Okay.

11 And you have made a recommendation
12 that appears on page 11 of Staff Exhibit 4.0 that the
13 company be directed to prepare its responses through
14 data requests in a more thorough and complete manner.

15 That's your recommendation personally?

16 A. I'd say that refers to the standard interim
17 and year end data requests, yes.

18 Q. Well, yeah.

19 What would be the criteria for
20 determining whether data requests are, first of all,
21 complete?

22 A. Well, one criteria would be that all of the

1 requests are answered.

2 Q. Okay.

3 A. I think in my testimony I've identified one
4 item that was not submitted.

5 Q. Do you know if there is a methodology, a
6 way to get data requests answered when they aren't
7 answered for whatever reason?

8 A. Oh, yes, and during the process, I called
9 Ms. Warren. We also sent subsequent data requests.

10 Q. Okay. That's fine. But what troubles me
11 here is that if a data request, if there's a response
12 to it and in this case Consumers thinks that it's
13 complete and you or someone else who may be handling
14 this at some time, you don't think it's complete, how
15 do we determine whether or not it's complete?

16 A. Well, the interim and year end requests,
17 they're not subjective. They ask questions like what
18 was the cost of gas or give me a schedule for this
19 amount.

20 And one of the difficulties I had was
21 that the cost of gas for example, you may have the
22 monthly PGA's. We can sum that, and we get copies or

1 I got copies of the ledgers and there's an amount
2 there, and then, of course, there's the exhibit in
3 their filing.

4 Well, the cost of gas was different in
5 all three of those cases.

6 Now, that's not necessarily a problem,
7 but one of the questions is would you reconcile those
8 amounts, and that's I think a pretty straightforward
9 and objective task and yet it wasn't done.

10 Q. It wasn't reconciled? There was no
11 response to that?

12 A. Well, the response, I might have gotten a
13 response that said they're different by this amount,
14 but that's not a reconciliation. That's just telling
15 me they're different. A reconciliation explains why
16 they're different.

17 Q. Okay. Now, you're a CPA?

18 A. Yes.

19 Q. Okay. And you expect as a CPA, you have
20 training and education that says a reconciliation is
21 a particular, I don't want to use the word
22 compilation but an assembly of numbers to reach

1 another number, and I'm not an accountant either,
2 but, I mean, in your training and education, a
3 reconciliation is done a certain way, correct?

4 A. Not a particular format but certainly two
5 different numbers and the reasons with explanation of
6 why they were different.

7 Q. Okay. But you want an explanation as well?

8 A. Yes.

9 Q. Okay. And if a person is not a CPA that
10 does this, can we immediately get into some conflict?

11 A. Well, I suppose, but these interim and year
12 end data requests have been the same for quite some
13 time, and I would think that anyone who has done it
14 for a while would be pretty well knowledgeable of
15 what they mean.

16 Q. Right. I understand that, but I'm just
17 having a problem with how you make a determination,
18 you or someone else who's doing your job in the
19 future, because if this recommendation finds its way
20 into an order, the company is going to have to live
21 with that, and if someone else is doing this job in
22 the future, Mr. Kahle, it just seems to me to present

1 problems in how the criteria is established that the
2 responses are thorough and complete frankly. It just
3 seems ambiguous.

4 Do you have any determination, other
5 than what you've testified to at this point, of how a
6 year end data request could be more thorough and are
7 you talking -- let me just expand on that. I want to
8 ask you another question, but are you talking about
9 in total or individual data requests?

10 A. I'm not sure I know what you mean by in
11 total.

12 Q. Well, the whole scope.

13 A. Above the interim and year end?

14 Q. Let's just talk about the year end data
15 request, not the standard interim but the other data
16 request.

17 You're talking about one document,
18 correct?

19 A. Yeah. Well, interim and year end is two
20 documents but yes.

21 Q. Okay. Let's talk about interim data
22 request then.

1 A. Okay.

2 Q. Do you have a suggestion of how the
3 Commission, and more importantly to me frankly is the
4 company, how it can determine if its data request
5 responses are thorough to meet the satisfaction of
6 something that might find its way into an order?

7 A. Well, for example, the reconciliation I
8 think could say that if two numbers are different,
9 you would indeed explain the difference as the
10 request had asked.

11 Q. Okay. How about others? Anything else?

12 A. Well, I don't have other examples in front
13 of me actually.

14 Q. Do you consider -- okay. First of all,
15 you're qualifying your data responses by referring to
16 the word standard, is that correct? You're saying
17 only the standard, interim and only the standard year
18 end, is that correct?

19 A. Yeah, I say standard because they're the
20 same every year.

21 Q. Okay. But you're not going beyond
22 standard, correct?

1 A. No.

2 MR. MORRIS: Okay. That's all I have of
3 Mr. Kahle.

4 JUDGE WALLACE: Any redirect?

5 MS. BUELL: Just one line, Your Honor.

6 REDI RECT EXAMI NATION

7 BY MS. BUELL:

8 Q. Mr. Kahle, do you recall when Mr. Morris
9 was asking you about your recommendation that in the
10 Commission's final order Consumers be directed to
11 prepare its responses to staff's interim and year end
12 data requests in a more thorough and complete manner?

13 A. Yes.

14 Q. And is it correct that these data requests
15 are generic data requests that are sent out to
16 Consumers every year?

17 A. Consumers and every other gas company, yes.

18 Q. Every other gas and electric utility in
19 fact, is that correct?

20 A. Yes.

21 Q. And they are basically the same questions
22 that go out to the utilities every year, is that

1 correct?

2 A. Yes. Occasionally a question or two is
3 added but yes, basically the same.

4 Q. And the interim data requests deal with
5 test month data?

6 A. Yes.

7 Q. And this is financial data. It is numbers.
8 Is that correct?

9 A. Yes.

10 Q. And the year end data requests ask for year
11 end data, is that correct?

12 A. Yes.

13 Q. And what these data requests ask for are
14 numbers, is that correct?

15 A. Yes.

16 Q. And the accounting department sends these
17 data requests out, correct?

18 A. Yes.

19 Q. And who reviews the responses?

20 A. Well, in this case I did.

21 Q. An accountant, is that correct?

22 A. Yes.

1 Q. Would anybody other than an accountant
2 review the data requests for adequacy?

3 MR. MORRIS: I'm sorry. I didn't understand
4 the question.

5 MS. BUELL: Would anyone other than an
6 accountant review the responses.

7 MR. MORRIS: I'm sorry. You mean in staff?

8 MS. BUELL: Yes.

9 THE WITNESS: No, just the accountants.

10 MS. BUELL: Okay. Thank you. I have nothing
11 further.

12 MR. MORRIS: I don't have anything further.

13 JUDGE WALLACE: Thank you, Mr. Kahle. I don't
14 believe I have any questions.

15 (Witness excused.)

16 MS. BUELL: Your Honor, staff calls Dennis L.
17 Anderson to the stand.

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22

1 DENNIS L. ANDERSON

2 called as a witness herein, having been first duly
3 sworn on his oath, was examined and testified as
4 follows:

5 DIRECT EXAMINATION

6 BY MS. BUELL:

7 Q. Good morning, Mr. Anderson.

8 Would you please state your full name
9 and spell your last name for the record?

10 A. Dennis L. Anderson (A-n-d-e-r-s-o-n).

11 Q. Mr. Anderson, by whom are you employed?

12 A. I'm employed by the Illinois Commerce
13 Commission.

14 Q. And what is your position with the Illinois
15 Commerce Commission?

16 A. I'm a senior gas engineer in the
17 Engineering Department of the Energy Division.

18 Q. And have you prepared written testimony for
19 purposes of this proceeding?

20 A. Yes, I have.

21 Q. Do you have before you a document which has
22 been marked for identification as ICC Staff

1 Exhibit 2.0? This testimony consists of a cover
2 page, table of contents, 13 pages of narrative
3 testimony, Schedule 2.01 and is titled "Direct
4 Testimony of Dennis L. Anderson."

5 A. Yes.

6 Q. And is this a true and correct copy of the
7 testimony that you prepared?

8 A. Yes, it is.

9 Q. Do you also have before you a document
10 which has been marked for identification as ICC Staff
11 Exhibit 5.0 consisting of a cover page, table of
12 contents, 18 pages of narrative testimony, and it's
13 titled "Rebuttal Testimony of Dennis L. Anderson"?

14 A. Yes.

15 Q. And is this a true and correct copy of the
16 rebuttal testimony that you prepared for this
17 proceeding?

18 A. Yes, it is.

19 Q. Do you have any corrections to make to
20 either your prepared direct or rebuttal testimony?

21 A. No.

22 Q. Is the information contained in ICC Staff

1 Exhibits 2.0 and 5.0 and the accompanying schedules
2 true and correct to the best of your knowledge?

3 A. Yes, it is.

4 Q. And if I were to ask you the same questions
5 today that are contained in your direct and rebuttal
6 testimony, would your responses be the same?

7 A. Yes.

8 MS. BUELL: Therefore, Your Honor, at this time
9 I ask for admission into the evidentiary record
10 Mr. Anderson's prepared direct testimony marked as
11 ICC Staff Exhibit 2.0 including the attached
12 schedules and Mr. Anderson's prepared rebuttal
13 testimony marked as ICC Staff Exhibit 5.0.

14 And I note for the record that these
15 are the exact same documents that were filed via the
16 Commission's e-docket system on July 19 and
17 October 19, 2007.

18 JUDGE WALLACE: Any objection?

19 MR. MORRIS: I have objections to certain
20 portions of the testimony.

21 JUDGE WALLACE: All right.

22 MR. MORRIS: First of all, in Exhibit 2.0, the

1 question at line 209, I object to the second sentence
2 of the response beginning at line 215 for the fact
3 that that sentence is nonresponsive to the question.

4 JUDGE WALLACE: Okay.

5 MR. MORRIS: Do you want me to just continue?

6 JUDGE WALLACE: Yes.

7 MR. MORRIS: Okay. At page 11 of Staff
8 Exhibit 2.0, line 233, I object to the question
9 because it's purely speculation of Mr. Anderson.

10 I object to the question at page 12,
11 Exhibit 2.0, line 256, because the question calls for
12 speculation which is apparent in Mr. Anderson's
13 answer.

14 I object to the question at line 281
15 of Exhibit 2.0, page 13. Again, it calls for
16 speculation, and it's again apparent in
17 Mr. Anderson's answer, and the same objection as to
18 the question beginning at line 296, page 14 of Staff
19 Exhibit 2.0.

20 That's all I have.

21 JUDGE WALLACE: For both exhibits of
22 Mr. Anderson?

1 MR. MORRIS: That's all I have.

2 JUDGE WALLACE: All right.

3 MS. BUELL: Your Honor, may I respond?

4 JUDGE WALLACE: Well, I'm going to take these
5 under advisement and issue a ruling later, so if you
6 have cross-examination of Mr. Anderson based upon any
7 of these, you should go ahead at this time.
8 Would you like to respond now?

9 MS. BUELL: I'll respond now if I may, Your
10 Honor.

11 JUDGE WALLACE: All right.

12 MS. BUELL: All of the lines that Mr. Morris
13 indicated, I disagree with his rationale that they're
14 based on speculation.
15 If you look on page 4 of
16 Mr. Anderson's direct testimony, he says directly
17 what he relied on. He relied on Mr. Robinson's
18 testimony and he reviewed company's responses to
19 numerous staff data requests that address issues
20 related to Consumers purchasing. That's what he
21 based his testimony on, not speculation.

22 JUDGE WALLACE: All right. Again, thank you.

1 I'm going to reserve ruling on this
2 but you should proceed with cross-examination of
3 Mr. Anderson.

4 MR. MORRIS: Are we ready to proceed on that
5 then?

6 JUDGE WALLACE: Yes.

7 MR. MORRIS: Okay. Good morning.

8 THE WITNESS: Good morning.

9 CROSS-EXAMINATION

10 BY MR. MORRIS:

11 Q. Mr. Anderson, as I understand your
12 testimony, you determined that Consumers made an
13 imprudent purchase of gas in June of 2005, is that
14 correct?

15 A. That's correct.

16 Q. And that was because it didn't make a
17 nomination in May 2005 to purchase gas, is that
18 correct, or is that partially correct?

19 A. Well, that's part of my rationale. My
20 testimony goes considerably deeper into that but yes.

21 Q. And your recommendation or your finding is
22 based upon at least to some extent because the

1 company did not make that purchase or nomination for
2 purchase in 2005, correct?

3 A. Well, what I say in testimony I believe is
4 that, you know, the affiliate relationship between
5 Egyptian and Consumers and the fact that C. A.
6 Robinson made both decisions for Egyptian gas storage
7 as well as Consumers, that he, you know, he
8 essentially had knowledge of both Egyptian's
9 activities and Consumers activities, and he delayed
10 his purchase as president of Consumers because he
11 knew that he was going to be getting gas from
12 Egyptian. That's the heart of my testimony.

13 Q. That's the heart of your testimony. I
14 understand.

15 You also had a problem, to be frank
16 about it, with the fact that Consumers did not make,
17 or there was no nomination to purchase gas in late
18 May 2005, correct?

19 A. Consumers changed their historic purchasing
20 practices from what they had always done.

21 Q. You've got a problem with that?

22 A. Right.

1 Q. Do you think that a company always has to
2 do the same thing every month in its operation,
3 specifically to nominate gas purchases?

4 A. No.

5 Q. Okay. But you have a problem here?

6 A. Yes.

7 Q. And why? Why do you have that problem with
8 the fact that it changed in the month of May 2005?

9 A. Well, I can restate what I said before. I
10 think you have C. A. Robinson as president of
11 Consumers and C. A. Robinson as president of
12 Egyptian, and I think C. A. Robinson knew as
13 president of Egyptian that he was going to make this
14 purchase. He had been negotiating since
15 approximately April of 2005 to buy this gas, and I
16 think as a result, C. A. Robinson of Consumers didn't
17 make that nomination because he knew this deal was
18 close to being made.

19 Q. Do you agree that gas prices were going
20 down in May of 2005?

21 A. Yes.

22 Q. Okay. Do you agree that they started to go

1 up in June of 2005?

2 A. Yes.

3 Q. Your testimony is that you don't think the
4 price at that time then had anything to do with
5 Mr. Robinson's decision?

6 MS. BUELL: Objection. That calls for
7 speculation.

8 Mr. Anderson has not gotten into
9 Mr. Robinson's mind. He has no way of knowing what
10 Mr. Robinson was thinking at the time.

11 MR. MORRIS: Well, he said here many times that
12 Mr. Robinson's testimony is not credible too so he's
13 obviously gotten into it somehow.

14 MS. BUELL: I'm sorry. Mr. Robinson's
15 testimony is not what?

16 MR. MORRIS: He said in his testimony many
17 times that Mr. Robinson's testimony is not credible.
18 He said he doesn't believe it, so I'm just trying to
19 get to that.

20 MS. BUELL: Well, my objection is that
21 Mr. Anderson cannot speculate as to what Mr. Robinson
22 was thinking.

1 JUDGE WALLACE: Sustained.

2 Q. BY MR. MORRIS: Do you think that gas
3 prices are a factor in the time of purchase of gas?

4 A. Is that a hypothetical question or does it
5 relate to what Consumers has done in this case?

6 Q. That's just a general question.

7 MS. BUELL: Well, then it is irrelevant. It
8 has no relevance to what Mr. Robinson did on
9 June 8th.

10 MR. MORRIS: Your witness is testifying as an
11 expert in engineering. He is testifying about why he
12 thinks Consumers made imprudent purchases. He should
13 have some knowledge about the purchase of gas.

14 JUDGE WALLACE: That's correct.
15 Go ahead and answer the question,
16 please.

17 THE WITNESS: Could you restate the question
18 again?

19 MR. MORRIS: I believe the question was simply
20 do you think that gas prices impact the time of
21 purchase of gas.

22 THE WITNESS: Yes.

1 Q. Okay. Do you think that gas prices have
2 anything to do with the time of sale of gas?

3 A. Yes.

4 Q. I mean, in fact, really, everything about
5 the purchase and sale of gas has to do with money,
6 doesn't it, prices?

7 A. No, I disagree with that. It has to do
8 with the supply that the utility needs at that point
9 in time. There are many factors that go into the
10 purchase of gas other than price and timing.

11 Q. Okay. You testified, correct me if I'm
12 wrong, but I believe your testimony is that you
13 concluded that Egyptian did not have in June of 2005
14 sufficient gas to sell the gas that it did to
15 Consumers absent the purchase from Atmos. Is that
16 correct?

17 A. No.

18 Could you refer to my testimony and
19 show me where I said that?

20 Q. BY MR. MORRIS: No, I'm not going to do
21 that. You tell me the answer is wrong.

22 Do you believe that Egyptian did have

1 sufficient gas to make a sale to Consumers absent any
2 purchase from Atmos in June 2005?

3 A. Well, I can restate my testimony. We had
4 numerous data requests to Consumers as to what was in
5 the Egyptian field, and I think I can summarize it by
6 saying we were given answers that said, well, all
7 this gas is commingled. We don't know. We were
8 given examples of accounting procedures. Such and
9 such didn't affect it.

10 I asked a number of data requests in
11 terms of what did you have in inventory at certain
12 times. The data requests didn't give me that
13 inventory. It gave me injections and withdrawals,
14 and the final data request did provide numbers.

15 And basically what I think I said in
16 testimony is that I really don't know what Egyptian
17 had in the field.

18 Q. So you're rejecting those, the numbers that
19 you received on data requests, responses to data
20 requests?

21 A. What I'm saying is there are numerous data
22 requests that had numerous answers on them, and I

1 couldn't draw any conclusions from what I saw in the
2 data requests as to what he had in the Egyptian field
3 or not.

4 Q. So your answer is you don't know?

5 A. I do not know.

6 Q. Okay. Are any of the responses -- excuse
7 me. Is any of the testimony that you have submitted
8 based upon information you received from anywhere
9 other than Consumers or Egyptian?

10 A. We sent data requests to Atmos Energy.

11 Q. Right. Were the responses that you
12 received from Atmos Energy used in your preparation
13 of your testimony?

14 A. Yes, they were, and they were consistent
15 with the answers that Consumers finally provided.

16 Q. Okay. Do you know any particular portions
17 of your testimony that used the Atmos Energy
18 information?

19 A. I don't recall exactly where it was used,
20 but again, after Consumers provided the information,
21 it essentially was the same information we got from
22 Atmos.

1 MR. MORRIS: Okay. Judge, I would move to
2 strike any of Mr. Anderson's testimony that's based
3 upon the responses received from Atmos.

4 I argued before and renew -- and you
5 overruled my argument before but I'll renew it --
6 that the data requests sent to Atmos were improper
7 because Atmos was not a party, has not ever been a
8 party to this particular docket, and that the staff
9 under the Rules of Practice cannot go to an outside
10 company not a party to this docket to receive
11 information to be used in this docket.

12 MS. BUELL: Well, Your Honor, staff disagrees
13 with that.

14 Staff is allowed under the Rules of
15 Practice to ask for data from other parties, and as
16 Mr. Morris indicated, you had overruled his prior
17 objection on specifically this matter.

18 Furthermore, Mr. Anderson just said
19 that he did not specifically use the Atmos data
20 request responses in his testimony. That information
21 was confirmed in Consumers Gas data request
22 responses, and that was what Mr. Anderson used.

1 JUDGE WALLACE: All right. I see no reason to
2 change at this point, and so the motion is denied.

3 MR. MORRIS: That's all the questions I have of
4 Mr. Anderson.

5 JUDGE WALLACE: Any redirect?

6 MS. BUELL: No, Your Honor, staff has nothing.

7 EXAMINATION

8 BY JUDGE WALLACE:

9 Q. All right. Mr. Anderson, under questioning
10 from Mr. Morris, I know he was testing your memory of
11 your own testimony, which is correct.

12 Was it your final answer that you did
13 not know or could not tell without referring back
14 what the amount of storage Egyptian had was?

15 A. You're referring to the volume of storage
16 exactly?

17 Q. I think that was the reference.

18 A. What I said in testimony I believe, I'm not
19 sure Consumers would agree with me, but I received
20 different data requests that had different
21 information on it.

22 Q. On the volume?

1 A. On volume.

2 You know, essentially we were told at
3 the beginning that this gas is all commingled. We
4 just don't know where it came from.

5 Then they talked about different
6 inventory procedures, accounting procedures, as well
7 as last in first out, first in first out.

8 I asked of other data requests
9 received essentially injection withdrawal numbers
10 that were done each year during 2005, if not the
11 balance of gas in storage.

12 Q. So at this point, you still do not know how
13 much volume is in the field?

14 A. Correct. The final data requests, they
15 gave me some numbers. The Egyptian field is not
16 regulated by the Illinois Commerce Commission, so I
17 have no historic data to look at, and I would point
18 out that Egyptian lost their major customer, Atmos
19 Energy, in terms of storage. They stored
20 approximately 500,000 decatherms in the field, and
21 Consumers stores approximately 160,000 decatherms.

22 Now, when he lost his biggest

1 customer, there's base gas in that field, and, you
2 know, I worked 30 years for Illinois Power Company,
3 and I ran their storage fields, and basically, when
4 you lose that big a customer, he had a lot of gas in
5 that field, and I have no knowledge of how it's
6 classified or anything else. They just gave me a
7 number, and again, I think, you know, my testimony,
8 what I say is the fact this transaction, you know,
9 the buying and selling was done on the same date,
10 June 8th, to me is really almost immaterial as to
11 what they asked.

12 MR. MORRIS: This is way beyond the question
13 you asked, Judge.

14 JUDGE WALLACE: Okay. Yeah, it is a little bit
15 past what I asked.

16 Q. So the final numbers they gave you still
17 weren't indicative of the volume of gas in the field?

18 A. Well, they gave me what they said was the
19 amount of gas Egyptian had in the field, the final
20 number, and again, I was getting a long convoluted
21 answer, but I have no historical knowledge of that
22 field or anything else to base this on, so...

1 JUDGE WALLACE: Okay. Fine. Thank you,
2 Mr. Anderson.

3 MS. BUELL: Your Honor, have you admitted ICC
4 Staff Exhibit 5.0 pending your determination
5 regarding the motion to strike portions of 2.0?

6 JUDGE WALLACE: I have not. I will admit ICC
7 Staff Exhibit 5.0 which is the rebuttal testimony of
8 Mr. Dennis Anderson.

9 MS. BUELL: Thank you.

10 (Whereupon ICC Staff Exhibit 5.0
11 was admitted into evidence at
12 this time.)

13 MR. MORRIS: If I may.

14 JUDGE WALLACE: Pardon me?

15 MR. MORRIS: If I may, I have a couple
16 questions.

17 JUDGE WALLACE: To Mr. Anderson?

18 MR. MORRIS: Yes.

19 JUDGE WALLACE: Oh, no, no. You don't recross
20 my recross.

21 Mr. Anderson, you may step down.

22 (Witness excused.)

1 JUDGE WALLACE: It is now five till 12. We
2 could take a short break and finish up with
3 Mr. Lounsberry if that's preferable to everyone or we
4 could take an hour break and come back.

5 Let's take a ten-minute break and come
6 back and finish up with Mr. Lounsberry.

7 (Recess taken.)

8 JUDGE WALLACE: Back on the record.

9 Next witness.

10 MS. BUELL: Your Honor, staff calls Eric
11 Lounsberry to the stand.

12 ERIC LOUNSBERRY
13 called as a witness herein, on behalf of staff of the
14 Illinois Commerce Commission, having been first duly
15 sworn on his oath, was examined and testified as
16 follows:

17 DIRECT EXAMINATION

18 BY MS. BUELL:

19 Q. Mr. Lounsberry, will you please state your
20 name and spell your last name for the record?

21 A. Eric Lounsberry (L-o-u-n-s-b-e-r-r-y).

22 Q. And, Mr. Lounsberry, by whom are you

1 employed?

2 A. The Illinois Commerce Commission.

3 Q. And what is your position with the Illinois
4 Commerce Commission?

5 A. I am the supervisor of the Gas Section of
6 the Engineering Department of the Energy Division.

7 Q. And have you prepared written testimony for
8 the purposes of this proceeding?

9 A. Yes, I have.

10 Q. And do you have before you a document which
11 has been marked for identification as ICC Staff
12 Exhibit 3.0 consisting of a cover page, 14 pages of
13 narrative testimony, and Schedules 3.01 through 3.04
14 and it's titled "Direct Testimony of Eric
15 Lounsberry"?

16 A. Yes.

17 Q. Is this a true and correct copy of the
18 testimony that you've prepared for purposes of this
19 proceeding?

20 A. Yes.

21 Q. Do you also have before you a document that
22 has been marked for identification as ICC Staff

1 Exhibit 6.0 consisting of a cover page and 11 pages
2 of narrative testimony, and it's titled "Rebuttal
3 Testimony of Eric Lounsberry"?

4 A. Yes.

5 Q. Is this a true and correct copy of your
6 rebuttal testimony?

7 A. Yes.

8 Q. Do you have any corrections to make to your
9 prepared direct or rebuttal testimony?

10 A. No, I do not.

11 Q. And is the information contained in ICC
12 Staff Exhibits 3.0 and 6.0 and the company schedules
13 true and correct to the best of your knowledge?

14 A. Yes.

15 Q. And if I were to ask you the same questions
16 today, would your responses be the same?

17 A. Yes.

18 MS. BUELL: Your Honor, I ask for admission
19 into the evidentiary record Mr. Lounsberry's prepared
20 direct testimony marked as ICC Staff Exhibit 3.0
21 including the attached schedules and Mr. Lounsberry's
22 prepared rebuttal testimony marked as ICC Staff

1 Exhibit 6.0.

2 I note for the record that these are
3 the same documents that were originally filed via the
4 Commission's e-docket system on July 19 and
5 October 19, 2007 respectively.

6 JUDGE WALLACE: All right. Thank you.

7 Any objection?

8 MR. MORRIS: I have objections again to certain
9 specific questions.

10 JUDGE WALLACE: All right.

11 MR. MORRIS: Shall I go ahead?

12 JUDGE WALLACE: Yes, please.

13 MR. MORRIS: Referring first of all to ICC
14 Staff Exhibit 3.0 -- and by the way, all of this will
15 be 3.0 -- page 5, line 89, I object to the answer
16 that follows the word "no" as being nonresponsive.
17 The question asks about purchase of local gas and
18 ends up with explanations of transportation of gas.

19 I object, the company objects at page
20 6, lines 119 and 125 both, for the reason that
21 although they are stated to be nonlegal
22 understandings, they are legal answers, and I don't

1 think that Mr. Lounsberry's qualifications that are
2 established here are such that he is qualified to
3 give the answers to respond to those questions in
4 that they do ask for a legal opinion.

5 And that's all I have, Judge.

6 MS. BUELL: Your Honor, I'd prefer to respond
7 to these now orally.

8 Staff believes that Mr. Lounsberry has
9 qualified himself as an expert witness in this
10 proceeding. He has worked for the Commission for a
11 very long time, has a great deal of institutional
12 knowledge and is well-qualified to discuss what Part
13 530 indicates and what the phrase sales for resale
14 means, and he has stated he's not a lawyer and these
15 are his expert opinions. These are not his legal
16 opinions, so staff does not believe these portions
17 should be stricken.

18 JUDGE WALLACE: And does that go for the line
19 89 one also?

20 MS. BUELL: Yes, it does, Your Honor. We
21 believe that that response is responsive to the
22 question.

1 JUDGE WALLACE: All right. I'll go back. I'm
2 going to overrule the motions to strike portions of
3 both Mr. Anderson's testimony and Mr. Lounsberry's
4 testimony. I think this testimony --

5 MR. MORRIS: In total?

6 JUDGE WALLACE: Yes.

7 MR. MORRIS: All of those objections?

8 JUDGE WALLACE: Yes.

9 I think Mr. Lounsberry is ready for
10 cross.

11 Oh, and I will admit ICC Staff
12 Exhibits 2.0, 3.0 and 6.0.

13 (Whereupon ICC Staff Exhibits
14 2.0, 3.0 and 6.0 were admitted
15 into evidence at this time.)

16 MS. BUELL: Thank you, Your Honor.

17 Staff tenders Mr. Lounsberry for
18 cross-examination.

19 MR. MORRIS: Good morning, Mr. Lounsberry.

20 THE WITNESS: Good afternoon.

21 MR. MORRIS: I stand corrected. Thank you.

22

1 CROSS-EXAMINATION

2 BY MR. MORRIS:

3 Q. Mr. Lounsberry, you've testified, as I
4 understand your testimony, you believe that exhibits
5 or, excuse me, Schedules 3.2 and 3.3 attached to your
6 Exhibit 3 relate to local gas, is that correct?

7 A. Yes.

8 Q. And is local gas, is the phrase local gas
9 mentioned in Schedules 2.2 and 2.3?

10 A. You mean 3.02 and 3.03?

11 Q. I'm sorry. Right. 3.02 and 3.03.

12 A. No.

13 Q. You also made the same conclusion as to the
14 purpose of the gas storage contract which is attached
15 as Schedule 3.04 to your testimony, correct?

16 A. 3.04 is attached to my testimony.

17 JUDGE WALLACE: I didn't hear you.

18 THE WITNESS: 3.04 is attached to my testimony.

19 Q. BY MR. MORRIS: But my question is you made
20 the same conclusion that its purpose was related to
21 local gas or local production, didn't you?

22 A. No. The gas storage agreement is the

1 contract whereby which Consumers obtained storage
2 service from Egyptian, and I believe it also has a
3 portion for the farm tap customers that are attached
4 to Egyptian's system. It deals with the
5 transportation of gas for those customers.

6 Q. Do you believe that the gas storage
7 contract though has anything to do with local gas?

8 A. No.

9 Q. Okay. You concluded though that the
10 purpose of the gas sales agreement was to encourage
11 the production and sale of local gas. Is that a
12 misstatement?

13 A. Code Part 530 which deals with the
14 transportation of local gas and the legislation that
15 created that, my understanding of all that is it was
16 to create a market for local gas production in
17 Illinois that may not be able to get to the
18 interstate market by allowing it to be transported
19 across local distribution companies or the local
20 utilities in the state. It also allowed those
21 utilities the opportunity to purchase that gas.

22 Q. Okay. So your conclusion is based upon

1 your understanding of 530, Part 530 which works its
2 way, in your thinking, into the gas sales agreement?

3 A. Yes.

4 Q. Even though the gas sales agreement doesn't
5 include anything about or it doesn't include the
6 words local production or local gas?

7 A. Correct.

8 MR. MORRIS: I don't have anything else for
9 Mr. Lounsberry, Judge.

10 JUDGE WALLACE: Any redirect?

11 MS. BUELL: Yes, I do, Your Honor.

12 REDI RECT EXAMI NATION

13 BY MS. BUELL:

14 Q. Mr. Lounsberry, if I could direct your
15 attention to the gas sales agreement that is attached
16 to your direct testimony as Schedule 3.03, this is
17 the gas sales agreement that was in effect in 2005
18 between Consumers and Egyptian, is that correct?

19 A. That is correct.

20 Q. And Mr. Morris has asked you some questions
21 regarding the fact that local gas is not specifically
22 mentioned in this agreement.

1 Do you recall that?

2 A. Yes, I do.

3 Q. And could you please explain why you
4 believe that this agreement applies to local gas?

5 A. Certainly.

6 A couple reasons: First, on page 3 of
7 5 of Schedule 3.03 under Article 7, Quality, it makes
8 a reference to 83 Illinois Administrative Code Part
9 530, and as I mentioned earlier, Code Part 530 deals
10 with the transportation of local gas production over
11 local distribution company transportation systems.

12 Additionally, the precursor agreement
13 to this which was approved in 1997...

14 Q. Is that your Schedule 3.02?

15 A. That's my 3.02. When that agreement was
16 approved, the company in a data request response
17 which I have attached as 3.01 in referencing a
18 discussion of the gas sales agreement indicated that
19 local gas would always be 5 cents less than any other
20 gas purchased and also that the price that this would
21 create would be sufficient to attract gas producers
22 to drill along our system in reference to Consumers.

1 And when the company in 2003 came in
2 to renew the 1997 agreement, the discussion and
3 testimony was all that this was basically the same
4 agreement with just a few changes.

5 So based on all that, that is the
6 basis for my conclusion that the gas sales agreements
7 deal with local gas production.

8 MS. BUELL: Thank you.

9 Staff has nothing further, Your Honor.

10 MR. MORRIS: Nothing further, Judge.

11 JUDGE WALLACE: The gas sales agreement is what
12 you referred to as the GSA?

13 THE WITNESS: Yes.

14 JUDGE WALLACE: And then the gas storage
15 contract, is that separate?

16 THE WITNESS: That's a different document.

17 JUDGE WALLACE: Okay. I have no questions.

18 Thank you.

19 (Witness excused.)

20 JUDGE WALLACE: Anything further?

21 MS. BUELL: We don't have a briefing schedule,
22 Your Honor.

1 JUDGE WALLACE: All right. Let's go off the
2 record.

3 (Whereupon an off-the-record
4 discussion transpired at this
5 time.)

6 JUDGE WALLACE: Back on the record.

7 The briefing schedule is the initial
8 brief will be due February 15th and then the reply
9 briefs will be due March 7th.

10 If there's nothing further in this
11 matter, the record is marked heard and taken.

12 Thank you.

13 HEARD AND TAKEN.

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